

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 973 of 1999

in

SPECIAL CIVIL APPLICATION No 490 of 1993

with

CIVIL APPLICATIONS NOS. 12934 AND 12641 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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CHHATRASINH N CHAUHAN

Versus

SECRETARY

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Appearance:

MR KR DESAI for Appellant

NOTICE SERVED for Respondent No. 1, 2

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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

Date of decision: 01/12/1999

ORAL JUDGEMENT

Per Thakker, Actg. C.J.:

The appellant -petitioner has approached this Court by invoking Article 226 of the Constitution of India for quashing and setting aside an inquiry instituted against him and for getting retiral benefits.

The case of the appellant was that he was serving as Superintending Engineer. On March 31, 1992, he retired from service after office hours. A day before his superannuation, i.e. on March 30, 1992, he was served with a charge sheet containing allegations of irregularities said to have been committed by him between 1981 and 1985. He submitted his reply. The departmental inquiry, however, was not proceeded further. It is in these circumstances that he approached this Court by filing SCA No. 490 of 1993. The matter came up for admission before the learned Single Judge. Notice was issued to the respondents and was made returnable on January 27, 1993. No affidavit was filed and the matter was adjourned from time to time. On July 16, 1993, the learned Single Judge admitted the petition and by way of interim relief, it was directed that the petitioner should be paid his gratuity amount on his furnishing security before the authority making the payment and his filing an undertaking in this Court that he would refund the amount to the respondent in case his petition is dismissed. Regarding commuted pension, a direction was issued to the authority to allow to commute pension as per Rules and the petitioner would be paid 50% of commuted pension on his furnishing security for similar amount.

It appears that earlier, interim relief was granted against proceeding with the inquiry which came to be vacated and it was observed:

"The earlier interim relief against further prosecution of the inquiry proceedings is vacated, It will be open for the respondents to proceed with further inquiry and the outcome of the departmental proceedings shall be placed on the file of this court. It is expected that the respondents will expeditiously complete the inquiry, preferably within six months from today. D.S. permitted." (emphasis supplied).

It was the case of the appellant that the inquiry was not completed and hence, CA No. 1636 of 1994 was filed by the appellant for interim relief in terms of para 9 which read as under:

"The applicant, therefore, prays that -

- (a) Your Lordships may be pleased to direct the opponents to release the remaining amount of commuted pension against the undertaking before this Honourable court;
- (b) Your Lordships may be pleased to declare that the opponents have not availed the adequate opportunity of proceedings of the inquiry against the applicant and having remained idle for a year, they have run out of the limitation of six months imposed by this Honourable court and therefore they are not entitled to proceed with the inquiry now onwards without explaining the reasons for their own delay and laches, based on the principle of *Volenti non fit injuria*;
- (c) Your Lordships may be pleased to grant any other and further reliefs as may be deemed fit."

When notice of that application was served upon the respondents, an affidavit-in-reply was filed by the Joint Secretary, Narmada and Water Resources Department. So far as papers of LPA are concerned, date is not mentioned but it appears that it was solemnly affirmed in October 1994. It was stated at the Bar by learned counsel for the appellant that it was filed in court in 1998 and a copy was served to him on August 12, 1998.

It was *inter alia* stated in the affidavit that the incident came to the knowledge of the department, for the first time, in 1985 (though the figure mentioned is of 1965 there appears to be an error because the incident relates to the period between 1981 and 1985). Thereafter, preliminary inquiry was conducted and a reference was made to the independent authority. Said authority recommended to take disciplinary action against 35 delinquents. As per recommendation of the independent authority, departmental proceedings were initiated in accordance with Rules 9 and 10 of Gujarat State Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "Rules"). As the petitioner was due to retire on March 31, 1992, he was served with a charge

sheet on March 30, 1992 (incorrectly mentioned as September 30, 1992) . According to the deponent, Inasmuch as 35 delinquents were involved in the case, it took some time to serve charge sheets. A statement showing action taken and date of service of charge sheet was also annexed to the affidavit in reply at Annexure 'I'. According to the deponent, out of 35 delinquents, 25 were served with the charge sheets . Hence, the contention of the applicant that Government had not taken any action was not correct. It was further stated that the applicant was not entitled to the amount which he had claimed and for which interim direction was issued by the Court. In that connection, reliance was placed on a decision of the Division Bench of this Court in LPA No. 517 of 1993 decided on March 4, 1994. It was also stated that since several employees were involved in the inquiry, it took time. It was mentioned that the order passed by this Court was obeyed and the payment was made as per the direction. Subsequent to the direction issued by the learned Single Judge on July 16, 1993, Government had issued 21 charge sheets to the concerned delinquents connected with the irregularities in the case. Being a joint inquiry case, proceedings under Rules 9 and 10 of the Rules were required to be complied with which resulted in delay. Finally, it was stated that the appellant was facing serious charges and he had tried to mislead this Court. It was, therefore, prayed to dismiss the application filed by the appellant/ applicant.

An affidavit in rejoinder was filed by the applicant stating therein that the stand taken by the deponent of the affidavit in reply was not in consonance with law and there was non-compliance with the order passed by this Court. It was also stated that when direction was issued not only for making payment of pension but also to complete the inquiry, it was obligatory for the authorities to complete the inquiry within stipulated time or to get extension. As nothing was done, the authorities had disobeyed the order of this Court. In these circumstances, a prayer was made to grant all benefits in favour of the applicant.

Further affidavit was also filed by the Under Secretary wherein it was reiterated that departmental inquiry was to be instituted against 35 delinquents and defence statements were to be obtained. On further scrutiny, it was found that the case of four delinquents was required to be re-examined in consultation with independent authority. For that purpose, the case was submitted to the Chief Engineer (OC) on February 20, 1994 and his opinion was received on August 30, 1994. On receipt of

the opinion, proposal was sent to the independent authority on September 14, 1994. Necessary clarification was made. Even thereafter, the independent authority asked the Government to obtain written explanation from three out of four delinquents. Written explanation was obtained from three delinquents and the same was sent to independent authority on October 7, 1997. File was again submitted for selection of inquiry officer before Government and sanction was obtained on December 4, 1997. The case was thereafter entrusted to the inquiry officer on March 16, 1998 and the proceeding were initiated. The petitioner, however, made a representation to postpone the proceedings vide his letter dated March 24, 1998 as he was on foreign tour with his family and he was to come back in August 1998. It was stated that thereafter there was no intimation from the petitioner and proceedings could not be initiated.

The matter was fixed for final hearing before the learned Single Judge who, after hearing the parties, dismissed the petition inter alia observing as under:

"It was a complicated matter against 35 delinquent officials including the petitioner and in any way, the inquiry cannot be concluded within a specific period as the independent authority had to be appointed for conducting the inquiry".

According to the learned Single Judge, in these circumstances, the prayer of the petitioner for quashing inquiry could not be granted. The petition was accordingly dismissed. The said order is challenged by the appellant in this appeal.

We have heard, at considerable length, Mr.R.D.Raval for Mr.K.R. Desai for the appellant. He submitted that there is non-compliance and disobedience of the order passed by the learned Single Judge on July 16, 1993 inasmuch as inquiry was not completed within the stipulated time. Neither the prayer for extension was made nor was granted by the Court . In these circumstances, learned Single Judge has committed an error of law and of jurisdiction in dismissing the petition. According to Mr. Raval, it is also not correct that against 35 officials, inquiry was to be held. He contended that long and undue delay , without proper explanation, vitiated the inquiry in the light of

the fact that the petitioner retired in 1992 and even thereafter seven years have elapsed. The appellant is not keeping good health. Human memory has also its limitations and it would be difficult for the appellant to remember the incident said to have happened before more than a decade which may prejudicially affect his defence. He stated that everything is on record and the inquiry could have been completed within time limit as per the order of the learned Single Judge or sometime thereafter. No further evidence was necessary and there was no earthly reason to keep the inquiry pending for 10 to 15 years. Reliance was placed, in this connection, on a decision of the Supreme Court in State of A.P. vs. N. Rakakrishna, AIR 1998 SC 1833. Mr. Raval made a grievance that though written arguments were placed on record by the counsel for the appellant and various judgments were cited, learned Single Judge did not consider them in their proper perspective and made passing reference observing that they were not applicable to the facts of the case. He, therefore, submitted that on these grounds, LPA deserves to be allowed.

In the facts and circumstances, in our opinion, the learned Single Judge has not committed any error of law or of jurisdiction in dismissing the petition and in not quashing the inquiry. To us, law appears to be well settled that whenever an inquiry is instituted against a Government employee, ordinarily, in exercise of extraordinary powers under Article 226 of the Constitution, a High Court does not quash departmental proceeding / inquiry. No doubt, powers of this Court are plenary in nature but they can be exercised in the light of settled legal position. When the petitioner came to this Court and interim order was passed on July 16, 1993, the learned Single Judge has observed in the said order itself that no affidavit was filed on behalf of the respondents. Thus, at that stage, all the facts were not before the Court. It was merely an interim order. At the time of final hearing of the matter, learned Single Judge was having necessary affidavits before him inasmuch as affidavit in reply as well as affidavit in rejoinder in CA No. 1636 of 1994 were filed and were part of the record. In both the affidavits, it was the case of the deponent-Under Secretary- that inquiry was instituted against as many as 35 officials, show cause notices were issued, independent authority was consulted and proceedings were initiated. If in the light of those facts, the learned Single Judge did not think it fit to quash the inquiry, it cannot be said that by doing so, an illegality has been committed by the learned Single Judge.

It is true that there was some delay . It is also true that the appellant had retired on March 31, 1992 and as stated at the Bar , which is not disputed by the other side (as in spite of notice, nobody has appeared) that the appellant is not keeping good health. All these grounds are relevant to direct the respondents to complete and finalise the proceedings. It was stated that after dismissal of the petition, hearing was fixed on November 15, 1999 which was subsequently declared a Public Holiday. Another date, therefore, will be given by the authorities. The respondent authority shall consider ill-health of the appellant and unless it is absolutely necessary, the authority will not insist for personal presence of the appellant. We further direct that whenever presence of the appellant is necessary, the authority will accommodate him as far as possible. We may clarify that it is open to the appellant and/or his counsel to take all contentions available at law and any observations made either by the learned Single Judge or by us in the present proceedings would not be construed to mean that the point is decided against the appellant since in the present proceedings, a prayer is made for quashing departmental proceedings. The authority will decide such contentions in accordance with law. The authority will complete the inquiry as expeditiously as possible.

It was stated that while granting interim relief, learned Single Judge had imposed a condition that the appellant would be paid gratuity amount and 50% of commuted pension on his furnishing security for the said amount and on filing undertaking in this Court. According to the learned counsel, this order must be read in the light of further direction to complete the inquiry within the stipulated time. Once that direction is not complied with and inquiry was not completed, the appellant must be relieved from security as well as undertaking. In our opinion, the contention is not well founded and cannot be accepted. So far as direction regarding payment of gratuity amount and 50% of commuted pension is concerned, the appellant was required to furnish security and to give an undertaking. Those directions were complied with and payment was made. But for such directions in an interim order, the appellant could not have received the amount. In fact, the contention of the authorities is that no such directions could have been issued by the learned Single Judge which were inconsistent with the decision of a Division Bench of this Court. At this stage, however, we are not expressing any opinion on that point. But when the payment was made to the appellant on

certain conditions, he cannot contend after receiving the payment that he should be relieved from such undertaking or discharged from security. The submission is, therefore, rejected.

It was , however, submitted by the learned counsel for the appellant that even otherwise, the appellant was entitled to the said amount. If it is so, it is open to the appellant to take that contention before the authority and the authority will pass appropriate order. Considering ill-health of the appellant, it is directed that the authority will not fix date of further proceeding of inquiry before February 1, 2000.

For the foregoing reasons and with the above directions, LPA deserves to be dismissed and is accordingly dismissed. No order on civil applications.

parekh